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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/679,043	10/03/2003	Gary A. Foos	14222/YOD ITWO:0070	1647
7590		07/23/2007	EXAMINER	
Patrick S. Yoder		COCKS, JOSIAH C		
FLETCHER YODER		ART UNIT		
P.O. Box 692289		PAPER NUMBER		
Houston, TX 77269-2289		3749		
		MAIL DATE		
		DELIVERY MODE		
		07/23/2007		
		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/679,043

Applicant(s)

FOOS ET AL.

Examiner

Josiah Cocks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 14-19, 31, 41 and 44-72 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 14-19, 41, 44-48, 55-67, 71 and 72 is/are allowed.
- 6) ☒ Claim(s) 49-54, 68 and 70 is/are rejected.
- 7) ☒ Claim(s) 31 and 69 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. Receipt of applicant's amendment filed May 7, 2007 is acknowledged.

Claim Objections

2. Claim 31 as presented May 7, 2007 does not include a period (".") at the end of the claim. The claim must end with a period.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. **Claims 49 and 51-54** are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. These new claims are drawn to a generic system including a valve and body that are not associated with a torch.

It has been held that "[u]nder certain circumstances, omission of a limitation can raise an issue regarding whether the inventor had possession of a broader, more generic invention. See MPEP 2163.05 (citing *Gentry Gallery, Inc. v. Berkline Corp.*, 134 F.3d 1473, 45 USPQ2d 1498

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(Fed. Cir. 1998). Further, “[a] claim that omits an element which applicant describes as an essential or critical feature of the invention originally disclosed does not comply with the written description requirement.” Id.

In this case, applicant’s invention is expressly titled as a “[t]orch operable to position a flow control lever a plurality of locations on the torch and method of assembling same.” Also, applicant’s specification describes that: “[t]he present invention relates generally to the field of cutting torches.” (specification, page 1); “[t]here is a need therefore for a torch that enables the cutting oxygen lever to be positioned a different positions on the torch with the same parts.” (specification, page 2). Further, all of applicant’s drawings are shown and described as torch systems.

Accordingly, there is insufficient evidence in the patent application as originally filed to support the claims 49 and 51-54 now presented to a generic system with a valve element and body that does not include elements of a torch or torch system.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. **Claims 49-52 and 54** are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 2,709,446 to Miller (“Miller”).

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Miller discloses in the specification and Figs. 1-11 a system as described in applicant's claims 49-52 and 54.

In particular, in regard to at least claim 49, in Figs. 1-3, Miller shows a tool/system comprising a body (11) comprising a valve passageway (see bore 44 of housing 43) coupled to a first fluid inlet (at least 42), a second fluid inlet (at least 58) and a fluid outlet (at least 41, 59, or 61). Applicant's attention is directed to Figs. 6-8 which shows arrows, which indicate the direction of fluid flow into the valve of a valve assembly (70). These arrows are considered to also indicate how fluid would flow in the valve assembly (11) shown in Figs. 1-3. In at least one mode of operation, air passes into inlet (42) and out through outlet (61) (see at least col. 3, lines 30-37). Also, air is also admitted to inlet (58) and out through outlet (41) (see at least col. 3, lines 14-17). The examiner notes that as suggested particularly in Figs. 7 and 8, the fluid flow to the openings (42 and 41 of Figs. 2-3) may be reversed.

Miller further shows that the valve (43) is selectively mountable in the valve passageway in a first orientation (see Fig. 2) and a second orientation (see Fig. 3) where the valve receives fluid from the first fluid inlet (at least 42) when in the first orientation and from the second fluid inlet (at least 58) in the second orientation (note that the valve receives fluid from the second fluid inlet 58 in both orientations). Additionally, the valve outputs the fluid to the fluid outlet (59 and 61) in both the first and second orientations.

In regard to at least claim 50, this claim recites that the body and valve of claim 49 are included in a torch or a torch component or a combination of both. The recitation of a "torch component" is considered to describe a component that is intended to be employed in a torch and does not recite any structural features of a torch. It has been held that "[a] claim containing a

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'recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus' if the prior art apparatus teaches all the structural limitations of the claim. See MPEP 2114 (citing *Ex parte Masham*, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987)). In this case, the examiner considers that the body and valve of Miller would be capable of being employed in a torch. Therefore, as the components of Miller suggest all the structural limitations of claim 50, this claim is anticipated by Miller.

In regard to at least claim 51, Miller shows a lever (64) that is selectively mountable to the body (11) in a first lever orientation (Fig. 2) and a second lever orientation (Fig. 3) inverted relative to the first lever orientation.

In regard to at least claim 52, the lever (64) directly contact and biases the valve (see Figs. 2-3).

In regard to at least claim 54, the lever (64) is reversibly mountable to the body in the first and second orientations without rotating the body (note that the components such as tubes 39 and 40 that make up the body do not rotate, see Figs. 2 and 3).

7. **Claims 68 and 70** is rejected under 35 U.S.C. 102(b) as being anticipated by **U.S. Patent No. 2,666,479 to Clinton** ("Clinton").

Clinton discloses in the specification and Figs. 1-5 an invention in the same field of endeavor as applicant's invention and as described in applicant's claims 68 and 70.

In particular, in regard to at least claim 68, Clinton shows a system comprising; a torch (10) comprising; a body comprising a valve passage (24) and a valve (23).

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In regard to the recitation that the valve is “selectively mountable in the valve passage in a first orientation and a second orientation inverted relative to the first orientation”, this recitation is not considered to distinguish applicant’s valve over the valve of Clinton. Valve member (23) is shown as a separate portion from valve block (22) (note distinct hatching, Figs. 2-4). This valve member (23) slides within valve block/body (22) in order to open and close the valve (see col. 3, line 37 through col. 4, line 26). Though this valve member (23) is not required to be removed to invert the orientation of the valve operating mechanism, this valve member (23) is capable of sliding movement within the central bore (24) of valve block (22) (see Figs. 2 and 3). When the lever (21) and arm (35) are removed to be reversed (see sig. 1 and col. 4, lines 4-26); the valve would be capable of being removed from the bore, and is therefore properly regarded as removable. Further, this valve member (23) is shown in Figs. 2-4 to be symmetrical, and thus when removed and reinserted in a second inverted position would enable the torch to function as normal.

Clinton further shows a first pivot joint (34) and a second pivot joint (33) and a lever (21) mountable to the torch in a first orientation and a second orientation inverted relative to the first orientation (see Fig. 1). The first orientation comprises the lever mutually exclusively secured to the first pivot point (34) without connection to the second pivot point (33) (see Fig. 2) and the second lever orientation comprise the lever mutually exclusively secured to the second pivot joint without connection the first pivot joint (see at least col. 4, lines 46-60).

In regard to at least claim 70, the lever (21) is reversible between the first and second lever orientations while the body remains in a fixed position (see Fig. 1).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. **Claim 53** is rejected under 35 U.S.C. 103(a) as being unpatentable over **U.S. Patent No. 2,709,446 to Miller ("Miller")** in view of **U.S. Patent No. 2,666,479 to Clinton ("Clinton")**.

Miller teaches substantially all the limitations of claim 53 (see discussion above) with the possibly exception of a second pivot point. Miller clearly shows a first pivot point (65) in at least the first orientation (62). However, it appears that the handle assembly (62) that includes lever (64) is inverted such that the same pivot point (65) serves each orientation (see Figs. 2 and 3).

Clinton teaches a torch/portable tool that is considered analogous art to applicant's invention. Clinton clearly provides that the torch includes a lever (21) that is placed in a first orientation and an inverted section orientation (see Fig. 1). Clinton also clearly provides each orientation has a separate and distinct pivot point (33 and 34) (see at least col. 4, lines 46-65).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made that a second pivot point as taught in Clinton would reasonably and fairly be incorporated in the handle of Miller to thereby allow for pivoting of a control lever to control a valve (see Clinton, at least col. 4, lines 46-65).

Allowable Subject Matter

10. As previously indicated, claims 14-19 and 31 are allowable (note, however, the requirement for a period at the end of claim 31).

Claims 41, 44-48, 55-67, 71 and 72 are allowable.

Claim 69 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

11. The following is a statement of reasons for the indication of allowable subject matter:

In regard to claims 41, 44-48, 55-67, 71 and 72, applicant's amendment and arguments submitted May 7, 2007 as to the distinction of these claims over the prior art of record have been carefully considered and are found persuasive. Accordingly, in light of the record taken as a whole, the prior art does not disclose teach or suggest the invention described in these claims.

In regard to claim 69, the prior art does not disclose, teach, or suggest a system including a torch having the structural features recited in claim 68 in combination with the valve passage having the features as recited in claim 69.

Response to Arguments

12. Applicant's arguments filed May 7, 2007 with regard to claims 49-54, 68 and 70 have been carefully considered but are not persuasive. As noted in the discussions above, all the limitations of these claims have been identified in the prior art. Accordingly, for at least this reason, these claims are not patentable to applicant.

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Conclusion

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Josiah Cocks whose telephone number is (571) 272-4874. The examiner can normally be reached on M-F 8:00-5:30.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven McAllister, can be reached (571) 272-6785. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

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applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jcc
July 19, 2007


JOSIAH COCKS
PRIMARY EXAMINER
ART UNIT 3749